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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/711,298

09/09/2004

Michael M. Iwatake

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7590

03/25/2009

INTERNATIONAL BUSINESS MACHINES CORPORATION

DEPT. 18G

BLDG. 321-482

2070 ROUTE 52

HOPEWELL JUNCTION, NY 12533

EXAMINER

MAI, ANH D

ART UNIT

PAPER NUMBER

2814

NOTIFICATION DATE

DELIVERY MODE

03/25/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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EFIPLAW@US.IBM.COM

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: MICHAEL IWATAKE, KEVIN MELLO, MATTHEW OONK,
AMANDA PIPER, YUN WANG and KEITH WONG

Application No. 10/711,298
Technology Center 2800

Mailed: March 25, 2009

Before TOI JOHNSON *Review Paralegal*
JOHNSON, *Review Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on February 24, 2009. A review of the application revealed that it is not ready for docketing as an appeal.

Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

PRIOR ORDER FOR RETURN

A prior “Order Returning Undocketed Appeal to Examiner” was mailed on May 31, 2007 wherein the Examiner was instructed that corrections were required. A review of the file finds that the required corrections have not been made in entirety. The matters still requiring attention prior to docketing are identified below.

EXAMINER’S ANSWER, MISSING CERTIFIED TRANSLATION

The Examiner relied on the foreign reference Osaki (JP-08-107087) in rejecting the claims. A full certified English translation of the above noted foreign reference is not of record in the Image File Wrapper (IFW). It should be noted that a computer translation is not an acceptable document.

When an Examiner relies on a document “in a language other than English, a translation *must* be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection” (emphasis added). MPEP §1207.02. Pursuant to a memorandum dated April 29, 2002 by Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy:

Effective immediately, no appeal should be forwarded to the Board of Patent Appeals and Interferences for decision

where: (1) a rejection is supported in whole or part by an abstract without reference to the underlying document, . . . ;
or (2) a rejection is supported in whole or part by a prior art document not in the English language, unless accompanied by a translation of the prior art document into English.

The memorandum also states “[i]f the document is in a language other than English and the examiner seeks to rely on that document, a translation *must* be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection” (emphasis added).

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) obtain a full certified English language translation of the above noted foreign reference;
- 2) complete the IFW by having the translation obtained scanned into the IFW file;
- 3) provide a copy of the translation obtained to Appellant; and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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